

REMARKS

The Applicant thanks the Examiner for the Office Action of October 7, 2009. The above amendments and the following remarks are being submitted as a full and complete response thereto.

1. Summary of Case Status

All of claims 1 – 20 pending in the case currently stand rejected.

A drawing objection has been made under 37 CFR 1.83(a). The essence of this objection is an assertion that the previous revisions to claims 1 and 16 added new matter. Thus while the objection is in form an objection to the drawings, in substance it is a rejection of claims 1 and 16.

Claims 1 – 20 were rejected under 35 USC 112, first paragraph as failing to comply with the written description requirement. The essence of this rejection is that it is a rejection of claims 1 and 16 on the same basis as that the objection to the drawings under 37 CFR 1.83(a).

Claims 1 – 12, 13 and 15 – 20 were rejected under 35 USC 103(a) as being obvious given US Patent 6,234,677 of Mogil in view of US Patent 5,501,338 of Preston;

Claims 1 – 11, 16, 17, 19 and 20 were rejected under 35 USC 103(a) as being obvious given Mogil in view of US Patent 5,403,095 of Melk;

Claim 14 was rejected under 35 USC 103(a) as being obvious given Mogil and Melk and further in view of US Patent 5,020,921 of Beales;

Claims 3 and 4 were rejected under 35 USC 103(a) as being obvious given Mogil and Preston, (or alternatively Mogil and Melk); and further in view of the identified

references of Arreazola, Sloan, Rucker and Ellison.

2. Drawing Objection

The Applicant has not amended the drawings at this time.

The Office Action states that “The drawings must show every feature of the invention specified in the claims.” It follows this with the non-sequitur “Therefore, the first portion not having a releasable securement (as set for in claims 1 and 16) must be shown or the feature(s) cancelled from the claim(s).”

The Office Action goes on to state “Examiner notes that the figures clearly show (while not labeled) releasable securements for the first portion (see for example figure **8(a)** the hook and loop material shown on the inside of **52**, as well as the tab and loop at the bottom of the portion (on either side of number **66**).”

In response, first, it appears that the material shown on the inside of item **52** (for which there is, of course, no reference in the text) appears to be shown inadvertently, and apparently incorrectly. As the Examiner will note, even if such a feature is shown on the underside of item **52**, there is no mating feature shown or described on the front of the unit, and without such a feature one half of a hook-and-eye fabric securement patch cannot perform the function ascribed to it in the Office Action. The Applicant would be glad to remove the apparently incorrect feature from item **52**, provided that no future objection is raised that the correction of the drawing by the removal of this apparently erroneous feature amounts to the inclusion of new matter.

Second, the wording recited in claims 1 and 16 to which the Office Action takes exception appear to be found in what is merely a subordinate clause, namely “unlike

said first portion". By the current amendment of claim 1, the words "unlike said first portion" have been re-located. Claim 16 has not been amended.

Both claims 1 and 16 recite the presence of the rigid member in the first insulated portion. It is abundantly clear that the first portion cannot be secured in a collapsed position because the presence of the rigid liner prevents the first portion from being moved to a collapsed position in the first place. *I.e.*, the preliminary prerequisite of the first portion being movable to a collapsed condition is not met. Therefore it necessarily follows that, of course, it cannot be secured in that position, either.

It is also self-evidently true that in this regard the second portion is "unlike said first portion." A person of ordinary skill reading the specification and viewing the illustrations could not fail to understand this.

Still further, it is apparent that the plain and simple punctuation of the last two clauses of claim 16 is being ignored. No proper interpretation could conclude that the first portion does or does not have a releasable securement. The semi-colon clearly divides the two clauses rendering the subordinate clause "unlike the first portion" at the beginning of the penultimate clause irrelevant and, thus, not applicable to the ultimate clause.

Therefore, the applicant respectfully submits that (a) the drawings do not require revision; and (b) the wording of claims 1 and 16 is manifestly supported by the text and drawings as they presently stand.

The Applicant therefore respectfully requests reconsideration and withdrawal of both the objection to the drawings and the rejection made under 35 USC 112, first paragraph.

3. **Amendments to the Claims**

As noted, claim 1 has been amended to change the location of the words “unlike said first portion”. Support for the amendments may be found in the specification as originally filed. Applicant submits that no new matter is added.

4. **Substantive Art Based Rejections – Mogil Teaches Away**

As a preliminary matter, the Applicant makes a general traverse of any and all rejections made in respect of the claims currently pending in the case and requests reconsideration and withdrawal of those rejections. As a further preliminary matter, the Applicant incorporates by reference the arguments made in previous responses in this matter, and, in particular those arguments presented in respect of the issue of teaching away, including the case law citations therein.

The Applicant notes that, once again, all of the rejections rely on the inventor's own US Patent 6,234,677 as the principal reference.

The Applicant respectfully points out that the apparatus shown and described in the Mogil reference upon which the rejection relies is a double cooler in which both sides of the cooler are collapsible, as shown in Figures 20, 21, and 27 – 32 thereof. The Mogil reference explicitly teaches, and claims, that both sides are collapsible. See col. 3, lines 56 – 67; col. 13, lines 20 – 24 and col. 13, line 30 to col. 14 line 3; and independent claims 1, 2, 8, 10, 28 and 29.

Indeed, every claim of the Mogil reference is either directly or indirectly for “A soft-sided, *collapsible*, insulated container comprising: ...”

The Mogil reference clearly teaches away from a *rigid* container.

Yet all of the present claims require rigidity in one way or another.

It is plain on the face of the document that the cited Mogil reference teaches away from the presently claimed invention, which requires a rigid reinforcement“... such that said first portion has a non-collapsible rigid form”, in the words of claim 1, and “said first portion being non-collapsible” in the words of claim 16.

The Office Action suggests that the teaching away of the primary reference is “unpersuasive”. The Applicant respectfully points out that issue is “teaching away”. The doctrine of “teaching away” is not subject to analysis on the basis of whether it is found to be “persuasive” or “unpersuasive”. The only relevant issue is whether the reference does, or does not, teach away. It is a question of law, not a subjective question of persuasiveness. To the extent that the Office Action of October 7, 2009 purports to apply a different standard, the Applicant respectfully submits that the commentary in the Office Action in paragraph 10 at page 9, under the heading “Response to Arguments”, is not in conformity with the law, and is not responsive to the Applicant’s previously submitted argument.

A *prima facie* case of obviousness can always be rebutted by showing that the art teaches away from the claimed invention in any material respect. (*In re Geisler*, 116 F.3d 1465, 1471, 43 USPQ 2d 1362, 1366 (Fed. Cir 1997).

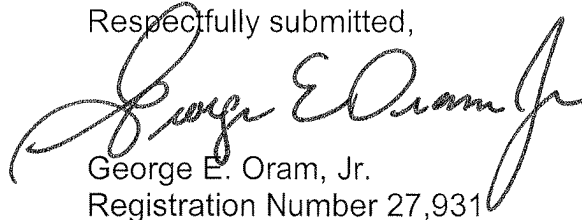
In that light, the Applicant again requests that the rejections of all of claims 1 – 20 be reconsidered and withdrawn, and that the case be allowed.

Conclusion

The Applicant respectfully submits that all of the claims presently pending in this case are in a condition for allowance. The Applicant therefore respectfully requests early and favourable disposition of this matter. If the Examiner believes that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event that this paper is not being timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account Number 01-2300, referencing Docket Number 024643-00015.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "George E. Oram, Jr.", is written over the typed name and registration number.

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